



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/478,071	01/03/2000	LEE ROY COPELAND	511-003	1167
39602	7590	05/03/2006	EXAMINER	
NOBLITT & GILMORE, LLC. 4800 NORTH SCOTTSDALE ROAD SUITE 6000 SCOTTSDALE, AZ 85251			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/478,071

Applicant(s)

COPELAND ET AL.

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 14-21 and 35-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 22-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-47 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

Claims 14-21,35-47 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on paper # 7.

***Claim Rejections - 35 USC § 102***

Claim 1-13,22-34 stand rejected under 35 U.S.C. 102(b) as being KOULBANIS et al 4324802.

See example 8, Mg Lanolate and 9, Na lauryl sulfate, as polar hydrophilic salts mixed with non-polar unsaponifiables, of example E and K; respectively. No patentable weight is given to how the processing was done; however, 40% non-saponifiable components are present (col 2, lines 40-44,) before processing and refinement according to known procedures (col 2, lines 20-24) was done. Thus, KOULBANIS anticipates the instant claimed compositions. Pre-treatment to obtain the oil mix is evident as a previously extracted fraction is specified, the instant claim 2 refinement (col 2, lines 16-18) from claim 3 Jojoba oil. Actives (claim 6-9) are at column 3, lines 5-23; the claim 10-13 methods at col 3, lines 52-68.

Likewise, claim 22 is met, because the oils of the organic starting materials include 18 carbon chains, as they are the same as of the instant oils.

Claim. 1-3, 6, 7, 10-13, 22-24, 27, 28, 31-34 stand rejected under 35 U.S.C. 102(b) as being anticipated by MOY 5928659.

See last paragraph. Col 2; and col 3, top for the instant method claims to providing substantive benefits. Additives, of the instant claim (emollients and conditioners) 6-9 and 27-30 are seen as met by the mineral oil, fatty acids, and water, and lanolin alcohol of Examples 1-4 MOY shows (col 3, lines 44-53) that avocado oil has palmitic and longer chain fatty acids, with, further, the refined products include sterols (col 3; lines 52-61).

The instant refinement is discussed at col 4, lines 25-38. The product is then mixed with polar hydrophilic salts, example 4, magnesium lanolate. MOY shows (col 3, lines 44-53) that avocado oil has palmitic and longer chain fatty acids, with, further, the

Art Unit: 1615

refined products include sterols (col 3; lines 52-61). No patentable weight is given to how the processing was done.

Claim 1-3, 6, 7, 10-13, 22-24, 27, 28, 31-34 stand rejected under 35 U.S.C. 102(b) as being anticipated by DREGER 2240365

***Claim Rejections - 35 USC § 103***

Claims 1-13, 22-34 stand rejected under 35 U.S.C. 103(a) as being unpatentable over KOULBANIS 4324802 in view of MOY 5928659.

KOULBANIS 4324802 (above) provides the instant composition, but is not explicit as to the presence of 18 carbon materials as part of the starting materials. MOY shows (col 3, lines 44-53) that avocado oil has palmitic and longer chain fatty acids, with, further, the refined products include sterols (col 3; lines 52-61). No patentable weight is given to how the processing was done.

Applicant's arguments filed 1/30/06 have been fully considered but they are not persuasive. Applicant's arguments, in part, are the spelling and grammar errors and cryptic statements make the rejection unclear. Examiner disagrees; the rejections are based on the fact that the instant compositions, and methods of substantive compositions, and methods of providing substantive benefits, are evident in the prior art, particularly in the prior art cited. Examiner apologizes in advance if any typos still intrude, and asks that the references be considered for what they show.

As to products by process; the claims would still be considered as product claims, and examiner is unaware of any non-obvious, unexpected, and critical objective data in the specification that would give patentable weight over the prior art compositions. Applicant's arguments were considered in the continued rejections, but we do NOT see claims to 10% unsaponifiables.

Art Unit: 1615

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN PAGE can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1615

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NEIL LEVY  
Primary Examiner  
Art Unit 1615

\*\*\*